

1                   **AGREEMENT BETWEEN THE CITY OF SAN JOSE AND ING**  
2                   **LIFE INSURANCE AND ANNUITY COMPANY FOR**  
3                   **INVESTMENT PROVIDER SERVICES FOR THE CITY OF SAN**  
4                   **JOSE DEFERRED COMPENSATION PLAN**

5           **THIS AGREEMENT** is made and entered into effective the 1st day of July, 2006,  
6 by and between the CITY OF SAN JOSE, a municipal corporation of the State of  
7 California (the "City"), and ING LIFE INSURANCE AND ANNUITY COMPANY, a  
8 corporation organized and existing under the laws of the State of Connecticut and ING  
9 Financial Advisors, LLC, a limited liability company organized and existing under the  
10 laws of the State of Delaware and registered as a broker-dealer under federal securities  
11 laws (collectively "ING"). This Agreement is separate and apart from any other contract  
12 issued to the Plan, including the group annuity contract issued to the Plan Sponsor by  
13 ILIAC.

14           **WHEREAS**, the City has established and maintains the City of San José  
15 Deferred Compensation Plan (the "457 Plan") and the City of San José PTC Deferred  
16 Compensation Plan (the "PTC Plan") as eligible deferred compensation plans pursuant  
17 to Section 457 of the Internal Revenue Code; and

18           **WHEREAS**, pursuant to San José Municipal Code Section 3.48.060 and Section  
19 3.50.060, the Deferred Compensation Advisory Committee (the "DCAC") administers  
20 the 457 Plan and the PTC Plan (the "Plans") and has the authority to determine all  
21 questions arising out of the administration, interpretation, and application of the Plans,  
22 including making decisions on behalf of the City as to the choice and nature of  
23 investments to be available under the Plans; and

24           **WHEREAS**, the DCAC established a Subcommittee to issue a request for  
25 proposals ("RFP") for investment providers for the Plans, to evaluate responses to the  
26 RFP, and recommend to the DCAC an entity or entities to provide investment and  
27 administrative services for the Plans; and

28           **WHEREAS**, on March 1, 2006, the Subcommittee issued the RFP on behalf of  
29 the City; and

30           **WHEREAS**, ING submitted a response to the RFP dated April 11, 2006; and

31           **WHEREAS**, ING provides investment vehicles appropriate for investment of  
32 funds held in trust in an eligible deferred compensation plan; and

33           **WHEREAS**, in addition to serving as an investment provider, ING provides a  
34 complete offering of services to public employers for the investment and administration  
35 of eligible deferred compensation plans including, but not limited to, account  
36 maintenance, recordkeeping, investment reporting, tax reporting, form processing, and  
37 benefits disbursement; and

1       **WHEREAS**, the Subcommittee has recommended that ING be selected to  
2 provide investment and administrative services for the Plans; and

3       **WHEREAS**, on June 1, 2006, the DCAC accepted the Subcommittee's  
4 recommendation; and

5       **WHEREAS**, the City and ING desire to enter into an agreement whereby ING will  
6 provide investment and administrative services for the Plans; and

7       **WHEREAS**, pursuant to San José Municipal Code Sections 3.48.060 and  
8 3.50.060, the DCAC has the authority to enter into this Agreement on behalf of the City;

9       **NOW, THEREFORE, THE CITY AND ING HEREBY AGREE AS FOLLOWS:**

10   **SECTION 1.    TERM OF AGREEMENT.**

11       The initial term of this Agreement shall be from July 1, 2006, to September 30,  
12 2010, inclusive, subject to the provisions of SECTION 32. The DCAC may, on behalf  
13 of the City, exercise an option to extend the term of this Agreement for up to an  
14 additional two years.

15   **SECTION 2.    DEFINITIONS.**

16       For the purposes of this Agreement, the following terms shall have the meanings  
17 set forth below:

18       A.    "City" means the City of San José.

19       B.    "ING" means collectively ING Life Insurance And Annuity Company ("ILIAC"),  
20 a corporation organized and existing under the laws of the State of  
21 Connecticut and ING Financial Advisors, LLC,, a limited liability company  
22 organized and existing under the laws of the State of Delaware and registered  
23 as a broker-dealer under federal securities laws. Specifically, ING Financial  
24 Advisors, LLC shall perform all marketing communications, enrollment and  
25 securities transactions settlements and processing functions assigned to ING  
26 under this Agreement. ILIAC shall perform all other responsibilities assigned  
27 to ING under this Agreement, including the Plans' and participant  
28 recordkeeping.

29       C.    "DCAC" means the Deferred Compensation Advisory Committee of the City of  
30 San José or any successor body established by the City Council to administer  
31 the Plan.

32       D.    For the purposes of compensation deferrals, "participant" is limited to  
33 participant as defined in San José Municipal Code Section 3.48.030 and  
34 Section 457 of the Internal Revenue Code for the 457 Plan and for the PTC  
35 Plan, participant is as defined in San José Municipal Code Section 3.50.030  
36 and Section 457 of the Internal Revenue Code. For all other purposes,  
37 "participant" includes persons who were participants but have left City

employment (whether by retirement or otherwise) and have investments in funds offered by ING, beneficiaries, and nonemployee former spouses for whom a separate account has been established pursuant to a conforming domestic relations order meeting the requirements of either Plan.

E. "Plan" or "Plans" means the City of San José Deferred Compensation Plan set forth in Chapter 3.48 of the San José Municipal Code and the PTC Deferred Compensation Plan set forth in Chapter 3.50 of the San José Municipal Code.

F. "Secretary to the DCAC" includes the Secretary's designee.

### SECTION 3. RESPONSIBILITIES OF ING.

A. ING shall be solely responsible for the performance of all services under this Agreement and for its employees who perform such services.

B. ING acknowledges that under San José Municipal Code Sections 3.48.025 and 3.50.025 the assets of the Plans are held in separate trusts by the City for the exclusive benefit of participants and their beneficiaries. ING will, as a provider of ministerial administrative and investment services for the Plans, agree to adhere to the prudent person standard of care that is required of fiduciaries and therefore will perform its duties and responsibilities under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a reasonably prudent person acting in a like capacity and familiar with such matters would use in an enterprise of like character.

C. ING shall perform all services under this Agreement in compliance with the requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code. However, ING shall not be responsible for the eligible status of the Plans to the extent status is affected by provisions of the Plan document (San José Municipal Code Chapter 3.48 or Chapter 3.50, as applicable) which are inconsistent with Section 457 requirements, and shall not be responsible for the eligible status of the Plans in the event the City directs ING to administer the Plans or disburse assets in a manner inconsistent with Section 457 requirements.

D. ING will work with the DCAC and City staff to provide and maintain at least one "kiosk"/computer station at a site specified by the DCAC for use by Plan participants to obtain account information and conduct transactions. Additional kiosks will be provided upon the mutually agreement of the DCAC and ING.

E. ING shall be responsible for the accuracy of information provided to participants and the City by ING. However, ING may rely on investment performance information provided to ING by industry-recognized sources such as Morningstar, the *Wall Street Journal* or other recognized industry publications. In any case where ING or the City identifies a discrepancy or

1 an error in information provided by ING, ING shall correct the information  
2 previously provided within thirty (30) days of ING's discovery, or the City's  
3 notice to ING, of the discrepancy or error.

4 F. ING shall advise the DCAC in a timely manner of any changes in federal or  
5 state laws or regulations of which ING may become aware that may affect the  
6 validity or administration of the Plans or ING's duties under this Agreement.  
7 ING shall not be liable for the effect of any such changes on either Plan or the  
8 status of either Plan as an eligible deferred compensation plan.

9 G. A representative of ING shall attend the monthly meetings of the DCAC and  
10 such other meetings of the DCAC as are mutually agreed by ING and the  
11 Secretary to the DCAC.

12 **SECTION 4. INVESTMENT FUNDS.**

13 A. Beginning October 5, 2006, ING shall provide investment funds appropriate  
14 for the deferral of compensation by participants of an eligible deferred  
15 compensation plan. Investment funds may be funds offered through ING or  
16 may be funds outside ING. Where investment funds are offered outside ING,  
17 ING may use its broker-dealer to effectuate transactions.

18 B. For the 457 Plan, ING shall make available variable investment options  
19 through a group annuity contract and a stability of principal investment option  
20 offered through ILIAC's Stabilizer Contract. The only option available to the  
21 PTC Plan will be the stability of principal option offered through a Stabilizer  
22 Contract. Unless otherwise approved by the DCAC, the investment objective  
23 of the Stabilizer is to outperform the Lehman Brothers Aggregate Bond Index  
24 by 125 basis points (before management fees are subtracted) over a full  
25 credit cycle, with an annualized tracking error of approximately 2%. The  
26 duration of the Stabilizer will be within 20% of the duration of the Lehman  
27 Brothers Aggregate Bond Index. For the period from October 1, 2006,  
28 through December 31, 2007, ING guarantees the crediting rate for the  
29 Stabilizer product shall be 5.80%; for the period from January 1, 2008,  
30 through December 31, 2008, ING guarantees the crediting rate for the  
31 Stabilizer product shall be 5.00%. Thereafter, prior to the beginning of each  
32 quarter, ING shall declare the crediting rate for each quarter of the term of this  
33 Agreement; provided, however, that in no case shall the crediting rate be less  
34 than 3%.

35 C. The investment funds that ING is authorized to provide to Plan participants as  
36 of October 5, 2006, are listed in EXHIBIT A, and ING shall continue to provide  
37 each such fund until such time as the DCAC directs the discontinuation of that  
38 particular fund. Prior to offering any additional or replacement investment  
39 fund to participants of the Plan or accepting any deferrals for investment in  
40 such additional or replacement fund, ING shall present the fund to the DCAC  
41 and obtain the approval of the DCAC to offer the fund to Plan participants.

D. Investment funds offered to Plan participants by ING shall have no restrictions on fund-to-fund transfers or on transfers to funds offered by another investment provider, except as follows:

1. Participant transfers out of the Stabilizer product will be subject to an industry standard 90-day "equity wash" provision. This provision requires any funds transferred out of the Stabilizer to a competing fund be held in a non-competing plan option for at least ninety (90) days before being moved to another competing fund(s). "Competing funds" are generally defined as bond funds with a duration of three years or less, investment options offered within the Plan by a provider other than ING, and the Self Directed Brokerage Account.
2. Restrictions may also be imposed on transfers related to frequent trading activity as described in ING's current Excessive Trading Policy (the "Excessive Trading Policy"). ING reserves the right to modify the Excessive Trading Policy as it relates to a particular fund, in whole or in part, at any time and without prior notice, depending on the needs of the underlying fund(s), the best interest of contract owners and fund investors, and/or state or federal regulatory requirements. ING shall provide to the Secretary to the DCAC a copy of the Excessive Trading Policy upon execution of this Agreement, and shall provide a copy of any changes together with the reason for the change to the Secretary within five (5) calendar days of the change.

E. ING acknowledges that the DCAC has adopted an Investment Policy which establishes asset classes in which funds are to be offered to participants. ING shall endeavor to provide at least one investment fund in each asset class. ING may make recommendations to the DCAC for the addition or deletion of asset classes; however, the selection of asset classes is within the discretion of the DCAC and ING shall bear no responsibility for the selection of asset classes offered in the Plan.

F. ING acknowledges that the DCAC has established performance benchmarks for investment funds in various asset classes, and the DCAC reserves the right to discontinue any investment fund which does not meet the established benchmark. ING will, upon the request or direction of the DCAC, discontinue offering any underperforming fund, replace it with an alternative investment fund in the same asset class, and provide education to participants in the replaced fund to assist participants in the selection of a replacement fund.

## **SECTION 5. ENROLLMENT/ACCOUNT SERVICES.**

A. ING shall perform the following enrollment and account services:

1. Assist the City in the enrollment of all employees who elect to participate in the 457 Plan or are required to participate in the PTC Plan and direct deferrals to investment funds offered by ING.

- 1           2.     Establish an account and appropriate sub-accounts for each  
2           participant.
- 3           3.     Provide not less than two (2) qualified account representatives to  
4           provide ongoing financial assistance to Plan participants. Such  
5           assistance shall include on-site individual counseling in such matters  
6           as investment funds available for deferral of compensation, transferring  
7           deferrals among funds, catch-up provisions, withdrawal and  
8           disbursement options, designation of beneficiaries, and completion of  
9           forms necessary to implement any of the foregoing. At least one (1) of  
10          these account representatives shall maintain offices within the City of  
11          San José.
- 12          4.     Provide, at ING's sole cost and expense, enrollment forms, customized  
13          for the Plans as required by the Secretary to the DCAC.
- 14          5.     Send quarterly statements to all participants, and to the City, detailing  
15          beginning and ending balances in each fund and detailing all  
16          transactions or other activity occurring during the quarter.
- 17        B.     Personnel of ING responsible for assisting the City in enrolling employees in  
18          the Plans or for providing on-going financial assistance to participants shall be  
19          full-time employees of ING and shall possess any and all licenses and other  
20          authorizations required to perform such services. Such personnel shall have  
21          the training and experience necessary to explain to participants the operation  
22          of the investment funds and the requirements of eligible deferred  
23          compensation plans.
- 24        C.     In addition to personnel to assist in enrollment of participants, ING will provide  
25          support personnel on an as-needed basis to provide technical and/or  
26          marketing assistance to Plan participants or City staff who perform deferred  
27          compensation functions.
- 28        D.     ING shall maintain telephone access for participants to conduct transactions  
29          (fund to fund transfers, contribution allocation changes, changes of address)  
30          and to obtain information including investment fund information, contribution  
31          allocations, account balances, transaction status, daily accumulation unit  
32          value ("AUV") or daily net asset value ("NAV") as applicable, performance  
33          information, requests for literature and forms, benefit pay status, and tax  
34          withholding and benefit illustrations. Telephone access will be provided by:  
35          1.     A toll-free telephone line for participant access to ING's service  
36                  representatives, with specialized lines for Spanish-speaking  
37                  participants and for the hearing impaired. The line will be available to  
38                  participants Monday through Friday, from 5:30 a.m. to 6:00 p.m. Pacific  
39                  Time.
- 40          2.     An Automated Service Line (ASL) on a 24-hour per day basis,  
41                  including weekends (except for downtime for maintenance), to allow  
42                  participants using a touch-tone telephone to make fund to fund

transfers and change investment allocations; to obtain information on share prices, performance information, account balances, investment allocations, and investment performance; and to transfer to a customer service representative during ING's normal business hours.

E. ING will provide the City and participants access to a City-specific Web Site on the Internet to permit fund transfers and investment allocation changes, to provide for participant statements, and to provide pie chart graphics of personal accounts, fund performance graphics, and a retirement planning calculator (which enables participants to create "what-if" scenarios to obtain information on interest earnings under various scenarios). The Web Site shall be available at ING-provided kiosks, and shall be updated on a daily basis. ING will:

1. Employ a "firewall" to prevent unauthorized access to ING's internal computing environment; and
2. Require participants to use an access password in order to enhance confidentiality and privacy of participants who request access to their account information.

F. ING shall ensure that all participant deferrals to the Plan for investment in funds offered by ING are allocated to the various funds in the amounts specified by the participant or the City, and shall process all payments in accordance with applicable state, federal and securities laws and regulations.

1. All deferrals, contribution allocation instructions and transfer information received in good order by the close of the New York Stock Exchange (generally 1:00 p.m. Pacific Time) shall be processed on the day of receipt at the price as of the close of business on that day. Deferrals, contribution allocation instructions or transfer information received after the close of the New York Stock Exchange (generally 1:00 p.m. Pacific Time) shall be processed no later than the next business day at the price as of the close of business on the day processed. In the event ING fails to timely process transactions as provided in this paragraph, ING shall credit accounts as though the transactions were timely processed and ING shall bear any financial loss resulting therefrom.
2. Where fund transfer or contribution allocation instructions are received from a Plan participant, ING shall send a confirmation statement to the participant. The confirmation statement for a fund transfer shall include the number of shares/units, the price per share/unit, and the cash value for both the fund from which and the fund to which the transfer was made.

G. ING shall accept deferrals from the City by check or by Electronic Fund Transfer (EFT), at no cost to the City or the participants.

**SECTION 6. RECORDKEEPING SERVICES.**

A. ING shall provide administrative and recordkeeping services for all participant accounts with investments in funds provided by ING. Such services shall include:

1. Maintaining records for each participant in a format acceptable to the Secretary to the DCAC and the City's Director of Finance including, but not limited to:

- a. The participant's sub-account number.
- b. For each reporting period, the amount of the participant's deferral to funds offered by ING and the allocation of such deferral to the each of the funds selected by the participant.
- c. The account balance from the beginning of the year to the date of each report.
- d. The balance in each fund at the beginning of each reporting period and at the end of each reporting period.
- e. The activity in each fund (including fund transfers and the number of shares/units, price per share/unit and cash value of each fund transfers) for the reporting period and the interest/earnings credited during the period.
- f. The amount of any distribution made during the reporting period.
- g. The current number of shares/units, AUV or NAV as applicable, and cash value of each fund.
- h. Other pertinent data necessary for the efficient administration of each participant's account.

2. Receiving participant and City instructions via multiple media, including the Internet, electronic data transfer from the City, toll-free telephone line, and hard-copy forms.

3. Processing all transactions, including deferrals, fund transfers, and disbursements.

4. Maintaining all holdings and transaction activity on ING's computer system in a format acceptable to the Secretary to the DCAC and the City's Director of Finance.

5. Transmitting account and plan information to participants and the City via multiple media, including the Internet, kiosks, quarterly statements, diskette, and toll-free telephone line.

B. ING shall work with City staff to establish an electronic data transfer link for the City to transmit payroll deduction information to ING.



1 C. ING shall maintain a disaster recovery program including storing copies of all  
2 essential records on tape cartridges at an off-site location and shall test, or  
3 cause to be tested, off-site procedures a minimum of one (1) time per year.  
4 It is understood that ING may use the services of IBM to maintain the off-site  
5 location. ING shall notify the DCAC in the event ING utilizes another off-site  
6 maintenance company.

7 D. ING shall perform data back-up on a daily basis: back-up of critical  
8 recordkeeping data at least three times each business day, twice at critical  
9 processing points and again at the end of the processing day. In addition,  
10 ING will perform daily incremental back-ups of test and production data on a  
11 Monday through Thursday basis, and weekly back-ups of full production data  
12 each Friday.

13 **SECTION 7. SELF-DIRECTED BROKERAGE ACCOUNTS.**

14 ING shall make available to the 457 Plan participants access to a self directed  
15 brokerage option ("SDBO") on such terms and conditions as are agreed to by the  
16 DCAC.

17 **SECTION 8. LOAN PROGRAM.**

18 In the event the 457 Plan is amended to provide a loan program, ING will assist  
19 the DCAC in the implementation of the program and will provide loan services for  
20 participants on such terms and conditions as are agreed to by ING and the DCAC.

21 **SECTION 9. INVESTMENT ADVICE PROGRAM.**

22 ING shall make available to the 457 Plan participants access to an independent  
23 third party online investment advice provider on such terms and conditions as are  
24 agreed to by ING and the DCAC.

25 **SECTION 10. EDUCATION PROGRAM.**

26 A. ING, at ING's sole cost and expense, shall design and prepare a  
27 comprehensive education program for City employees. The education  
28 program shall include, but not be limited to:

- 29 1. Fundamentals of investing, including: the effects of risk on investment  
30 and how to manage investments to reduce risk, how to read a  
31 prospectus and related materials, how to monitor and evaluate funds,  
32 characteristics of various funds, and asset allocation.
- 33 2. Retirement planning.
- 34 3. Fundamentals of deferred compensation, including tax benefits,  
35 eligibility for withdrawals, withdrawal options, restrictions on deferrals,  
36 catch-up provisions, and investment options available.

- 1 4. Explanation of fees and expenses incurred with any investment,  
2 including an explanation of fees imposed by ING.
- 3 5. An explanation of how participants can access account information and  
4 conduct transactions via the toll-free telephone line, the Internet, and  
5 ING-provided kiosks.
- 6 6. An explanation of the Loan Program if and when if a Loan Program is  
7 included.
- 8 B. To implement the education program, ING shall develop and prepare, at  
9 ING's sole cost and expense, educational materials on the topics listed above  
10 for distribution to participants. However, ING shall not distribute any  
11 materials to participants without the prior approval of the DCAC.
- 12 C. ING shall conduct a minimum of thirty (30) seminars/workshops per year for  
13 Plan participants, at ING's sole cost and expense. Seminars/workshops will  
14 be held at City facilities identified by the Secretary to the DCAC.  
15 Seminar/workshop topics will include:
  - 16 1. Basic deferred compensation information
  - 17 2. Investment and financial planning
  - 18 3. Asset allocation
  - 19 4. Retirement planning
  - 20 5. Distribution planning
  - 21 6. Other topics mutually agreed by ING and the Secretary to the DCAC.

22 **SECTION 11. DISBURSEMENTS AND TAX WITHHOLDING.**

- 23 A. When ING is notified of a request for disbursement (other than hardship  
24 withdrawals), an account representative of ING will contact the participant for  
25 the purpose of arranging to meet with the participant to provide individual  
26 counseling regarding disbursement options and to notify the participant of the  
27 availability of ING's toll-free customer service number. If the participant  
28 desires such a meeting, the account representative will meet with the  
29 participant to assist the participant with the selection of a disbursement  
30 option.
  - 31 1. The disbursement meeting shall include a review of the participant's  
32 personal and financial retirement objectives, how the participant's  
33 retirement income stream can meet those objectives, and the amount  
34 and duration of payments from the deferred compensation plan  
35 necessary to meet the objectives.
  - 36 2. ING representative will prepare benefit illustrations to assist the  
37 participant in understanding the economic impact the duration and  
38 income requirements will have on the participant's deferred  
39 compensation assets.

3. ING representative will discuss with the participant the impacts money management decisions can have on the income the participant receives.

4. ING representative will assist the participant in filling out the necessary disbursement forms and will deliver the forms to the Secretary to the DCAC for approval.

B. ING shall issue disbursements, including hardship withdrawals, in accordance with the disbursement form submitted by the participant or the City, the terms of the applicable Plan, and the requirements of Section 457 of the Internal Revenue Code and applicable Treasury Regulations. In the event the City or ING terminates this Agreement, ING shall be obligated to make disbursements only to the extent that funds are still available in the account of the City.

C. ING shall compute and deduct from the disbursements all state and federal income taxes required to be withheld from Plan distributions. ING will forward to the applicable taxing authority a detailed report of such withheld taxes within the timeframe prescribed by law.

D. ING shall prepare and forward to the applicable taxing authority and the participant, the appropriate tax reporting forms (e.g., Form 1099) within the timeframe prescribed by law.

E. For each participant receiving distributions from either or both Plans, ING shall perform an initial distribution test and shall perform annual distribution testing thereafter to confirm compliance with the distribution requirements of the applicable Plan and of Section 457 of the Internal Revenue Code. ING shall promptly notify the Secretary to the DCAC of any distribution which is not in compliance with such requirements and shall assist the City in taking appropriate action to correct any noncompliance.

## SECTION 12. REPORTS.

A. ING will provide the following reports to participants, in a format acceptable to the DCAC:

1. Quarterly financial reports providing at least the following information:

a. The total account balance at the beginning of the reporting period, the total contributions to the account and the total interest/earnings credited to the account during the reporting period, and the account balance at the end of the reporting period.

b. For each fund in the account, the fund balance at the beginning of the reporting period, the total contributions to the fund and the total interest/earnings credited to the fund during the reporting period, and the fund balance at the end of the reporting period.

- 1 c. For each fund in the account, the number of shares/units and the  
2 value of each share/unit in the fund at the beginning of the  
3 reporting period and at the end of the reporting period.
- 4 d. The contribution allocation as of the end of the reporting period.
- 5 e. The date and amount of each contribution to the account, and the  
6 total amount of contributions made during the reporting period.
- 7 f. The activity in the account during the reporting period listed by  
8 fund and including: the date the activity occurred; the type of  
9 activity (e.g., contribution, earnings, fund transfer) on each activity  
10 date; for each contribution, the amount of the contribution, the  
11 number of shares/units added, the price per share/unit, and the  
12 total shares/units in the fund after each contribution; for each fund  
13 transfer, the amount transferred and the number of shares/units  
14 and the share/unit price for both the fund from which and the fund  
15 to which the transfer occurred.
- 16 g. The distributions, including hardship withdrawals, made from the  
17 account during the reporting period.
- 18 2. Informational mailings, including a quarterly participant newsletter and  
19 participant information booklets describing the investment products  
20 funding the Plan to new participants at the time of enrollment. ING will  
21 customize reports to the specific funds offered to Plan participants.  
22 ING may provide additional or alternative publications, or may vary the  
23 frequency of distribution, upon the approval of the DCAC.
- 24 B. ING will provide the following reports to the DCAC, in a format acceptable to  
25 the DCAC:
  - 26 1. A monthly performance report showing the performance of each fund,  
27 net of fees, for at least:
    - 28 a. The reporting month.
    - 29 b. The year to date.
    - 30 c. The last twelve months.
    - 31 d. Cumulative returns for the preceding 3-year, 5-year, and 10-year  
32 periods (where available).
  - 33 2. The informational mailings to participants listed in paragraph 2 of  
34 subsection A above.
- 35 C. ING will provide the following reports to the City's Finance Department, in a  
36 format acceptable to the City's Director of Finance:
  - 37 1. A monthly transaction statement showing for the total City account and  
38 for each fund in the account at least: the beginning balance, the  
39 ending balance, and the amount of contributions, the amount of

- 1 distributions, any adjustments made, fund-to-fund transfers made,  
2 plan-to-plan transfers made, earnings, service fees, and fee credits  
3 occurring during the month.
- 4 2. A monthly list of Plan participants with investments in funds offered by  
5 ING and the status of each participant (e.g., active, inactive, deferred  
6 distribution, distribution).
- 7 3. Such other reports as agreed by ING and the City's Director of  
8 Finance.

9 **SECTION 13. PERFORMANCE STANDARDS.**

- 10 ING will meet the performance standards set out in EXHIBIT C, entitled  
11 "PERFORMANCE STANDARDS" which is attached to an incorporated in this  
12 Agreement.

13 **SECTION 14. RESPONSIBILITIES OF THE CITY.**

- 14 A. The City shall provide timetables, procedures and facilities for:
- 15 1. Group meetings of participants for distribution of information about the  
16 Plan and seminars/workshops.
  - 17 2. Counseling and enrollment of participants.
  - 18 3. Completion of forms by participants.
  - 19 4. Payroll deduction of deferrals.
- 20 B. The City shall cause appropriate deductions to be made from the appropriate  
21 City payrolls according to the participation agreement between City and the  
22 individual participant. The City shall send to ING, by check or wire transfer,  
23 the amount of the total applicable deductions.
- 24 1. Deferrals by check shall be sent to:  
ING Life Insurance and Annuity Company  
C/O ING Trust  
P.O. Box 31812  
Hartford, CT 06150-1812  
25 or to such other address as is specified in writing by ING.
- 26 2. Deferrals by wire transfer shall be sent to:  
Wachovia Bank of North Carolina  
ABA No: 053000219  
Bank Account Name: ING(ILIC) Govt & Health  
Account No: 208730044964  
Beneficiary Reference: 666779-0001  
  
OBI: City of San José Deferred Compensation Plan

or to such other facility or in such other manner as is specified in writing by ING.

C. The City agrees to transmit on a timely basis any relevant participant information as is necessary for ING to carry out its responsibilities as Plan administrator to each participant upon:

1. Entry into the 457 Plan or the PTC Plan.
2. Changes in an individual participant's account.
3. Withdrawal, termination or request for distribution under the 457 Plan or the PTC Plan, including the method and timing for any distribution.

D. The City will send payroll deduction information to ING by electronic data transfer link (when established by the City and ING) or by magnetic tape for processing by ING.

E. The City will use its best efforts to assure the accuracy and completeness of all participant information provided by the City. ING shall be entitled to rely upon the accuracy of information that is furnished to it by the Director of Finance, the City Manager, the Secretary to the DCAC, or the designee of any of these officers, and ING shall not be responsible for any error arising from its reasonable reliance on such information. In the event the City or ING discovers an error in such information, ING will assist the City in making appropriate corrections.

#### **SECTION 15. CITY ADMINISTRATIVE FEES.**

A. ING shall pay to the City an annual administrative fee to recover the City's costs of the Plans' program operations.

B. Beginning the second quarter of Fiscal Year 2006-2007, ING will remit to the City, on a quarterly basis, an administrative fee based on the DCAC annual budget.

For FY 2006-2007, the annual budget for the purpose of calculating the administrative fee shall be Three Hundred Seventy Thousand Dollars (\$370,000). The annual budget shall be increased on an annual basis by the increase in the Consumer Price Index for San Francisco-Oakland-San José on a May-to-May basis. In the event the index is not published for May, the calculation shall be based on a twelve-month change beginning with the index published immediately preceding the month of May. In the event there is a decrease in the Consumer Price Index, the annual budget adjustment for that year shall be zero. The budget adjustment shall be effective July 1 of each year of the term of this Agreement.

C. Upon the direction of the DCAC, in addition to the administrative fee based on the DCAC annual budget, ING shall remit an asset-based fee based on the cash value of the Plans' assets administered by ING. The DCAC may increase or decrease the percentage rate of the fee based upon projections of

1 program costs. The DCAC shall notify ING of any such change and ING  
2 shall implement the change on the date specified by the DCAC, which date  
3 shall not be less than thirty (30) days after the date of the DCAC's notice to  
4 ING. ING may deduct the asset-based fee from the participants' accounts.

5 D. The amount to be paid to the City for each quarter shall be the sum of the  
6 amounts calculated for each day in the quarter at the daily amount of the  
7 administrative fee rate then in effect multiplied by the cash value of the assets  
8 as of the end of each day for which the fees are assessed. ING shall credit  
9 the deducted fees with a short term rate of interest, and shall remit the fees,  
10 plus any interest accrued thereon, to the City on a quarterly basis within thirty  
11 (30) days from the end of each quarter of the term of this Agreement.

12 E. ING and the City agree that each will provide participants with full disclosure  
13 of the provisions of this SECTION 15.

14 **SECTION 16. COMPENSATION.**

15 A. ING may charge participant accounts for ING's administrative fee and  
16 investment management fees in amounts not to exceed the amounts set forth  
17 in EXHIBIT A, entitled "COMPENSATION", which is attached to and  
18 incorporated in this Agreement.

19 B. The administrative fee and the investment management fees (including fund  
20 expenses) shall be paid on a daily basis at the rates set forth in EXHIBIT A.

21 C. ING shall retain any and all 12b-1 fees and any and all recordkeeping refunds  
22 received from investment companies.

23 D. ING shall not charge the City for any services performed pursuant to this  
24 Agreement.

25 E. ING shall not charge any acquisition fees (e.g., commissions, loads, or similar  
26 expenses), any fees for contract charges or operating expenses other than  
27 those specified in subsection A above, and shall not charge any surrender  
28 charges (e.g., fees to liquidate assets or transfer assets).

29 F. ING shall disclose all applicable fees to the participant at the time of the  
30 participant's enrollment.

31 G. The fees set forth in this SECTION 16 shall be full compensation to ING for all  
32 services performed under this Agreement and for all expenses incurred in the  
33 performance of such services.

34 **SECTION 17. INDEPENDENT CONTRACTOR.**

35 It is understood and agreed that ING, in the performance of the work and  
36 services pursuant to this Agreement, shall act as and be an independent contractor and  
37 not an agent or employee of the DCAC or the City of San José. It is further understood  
38 and agreed that neither ING nor any of its officers, employees or agents shall obtain any  
39 right to retirement benefits, worker's compensation benefits or other benefits or

1 privileges which accrue to City employees, and ING hereby expressly waives any claim  
2 it may have to any such rights.

3 **SECTION 18. CONFIDENTIALITY.**

4 ING shall maintain strict confidence with respect to all data furnished to ING by  
5 the City or the DCAC and shall not disclose to any person any information received by  
6 ING in the course of performance of this Agreement except as authorized by the DCAC,  
7 the Secretary to the DCAC, the City Manager, the City Attorney, or a designated  
8 representative of any of the foregoing, or as required by law or by judgment of any court  
9 of competent jurisdiction.

10 **SECTION 19. CONFLICT OF INTEREST.**

11 A. ING shall avoid all conflict of interest and the appearance thereof in the  
12 performance of this Agreement.

13 B. For each person performing professional services pursuant to this  
14 Agreement, ING shall file with the City Clerk a disclosure statement  
15 (Statement of Economic Interests - Form 700) which includes disclosure of  
16 such person's investments, interests in real property, income, loans, gifts, and  
17 business positions relating to persons, business entities and other sources  
18 related to or connected with: brokers who purchase or sell investment  
19 products or securities for the investment vehicles provided by ING to Plan  
20 participants; companies, firms, banks or other entities whose investment  
21 products or securities are included in or are a part of the investment vehicles  
22 provided by ING to Plan participants; investment providers other than ING  
23 who provide investment management services or investment products for  
24 Plan participants.

25 **SECTION 20. THE CONTRACTOR'S RECORDS.**

26 A. ING shall maintain any and all ledgers, books of account, invoices, vouchers,  
27 canceled checks, and other records or documents evidencing or relating to  
28 charges for services, or expenditures and disbursements charged to the City  
29 for a minimum period of four (4) years, or for any longer period required by  
30 law, from the date of the expiration or earlier termination of this Agreement.  
31 Such records shall be maintained in an electronic format approved by the  
32 City.

33 B. ING shall maintain all documents and records which demonstrate  
34 performance under this Agreement for a minimum period of four (4) years, or  
35 for any longer period required by law, from the date of expiration or earlier  
36 termination of this Agreement.

37 C. Any records or documents required to be maintained pursuant to this  
38 Agreement shall be made available for inspection or audit, at any time during  
39 regular business hours, upon written request by the City Attorney, the City  
40 Auditor, the City Manager, the Secretary to the DCAC, or a designated



1 representative of any of these officers. Copies of such documents shall be  
2 provided for inspection at City Hall when it is practical to do so. Otherwise,  
3 unless an alternative is mutually agreed upon, the records shall be available  
4 at ING's address indicated for receipt of notices in this Agreement.

5 D. Where the City has reason to believe that such records or documents may be  
6 lost or discarded due to dissolution, disbandment or termination of ING's  
7 business, the City may, by written request by any of the above-named  
8 officers, require that custody of the records be given to the City and that the  
9 records and documents be maintained in City Hall. To the extent required by  
10 applicable law, ING may retain originals of such records and documents and  
11 provide a copy to the City. Access to such records and documents shall be  
12 granted to any party authorized by ING, ING's representatives, or ING's  
13 successor-in-interest.

14 **SECTION 21. HOLD HARMLESS.**

15 ING shall defend, indemnify and hold harmless the DCAC and the City and their  
16 officers and employees against any and all claims, losses or liabilities arising out of or  
17 resulting in any way from work performed under this Agreement due to the willful or  
18 negligent acts (active or passive) or omissions by ING or ING's officers, employees,  
19 subcontractors or agents. The acceptance of said services and duties by the DCAC or  
20 the City shall not operate as a waiver of such right of indemnification.

21 **SECTION 22. ASSIGNMENT.**

22 ING shall not assign, transfer or convey this Agreement nor any of ING's rights,  
23 duties or obligations hereunder, nor any part thereof, without the prior written consent of  
24 the DCAC. In the event ING attempts to so assign, transfer or convey this Agreement  
25 or any of ING's rights, duties or obligations hereunder, such assignment, transfer or  
26 conveyance shall be void and of no effect. The use of a subcontractor to perform  
27 services pursuant to this Agreement shall not constitute an assignment, transfer or  
28 conveyance of this Agreement or of ING's rights, duties or obligations hereunder,  
29 provided that the subcontractor is identified in this Agreement or the DCAC has  
30 provided written approval prior to the commencement of any work or services by the  
31 subcontractor, that ING be solely responsible for any and all payments due to the  
32 subcontractor for the performance of the subcontractor's services, and that ING be  
33 solely responsible for the proper performance by the subcontractor.

34 **SECTION 23. NONDISCRIMINATION.**

35 ING shall not discriminate, in any way, against any person on the basis of age,  
36 sex, actual or perceived gender, race, color, creed, national origin, religion, sexual  
37 orientation, marital status, or disability in connection with or related to the performance  
38 of this Agreement.

**SECTION 24. COMPLIANCE WITH LAWS.**

ING shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**SECTION 25. WARRANTIES OF THE CONTRACTOR.**

ING represents and warrants that:

- A. ING is an investment adviser registered as such with the Securities and Exchange Commission ("SEC") under the Investment Advisers Act of 1940, as amended. ING Financial Services, LLC (a wholly-owned subsidiary of ING) is registered as a broker-dealer with the SEC and is a member in good standing of the National Association of Securities Dealers.
- B. ING is duly authorized under all applicable laws and regulations to provide the services contemplated under this Agreement. ING shall immediately notify the DCAC if any license, certification or other authorization required for ING to perform said services is revoked, expires without renewal, or is otherwise no longer in effect.
- C. The personnel of ING responsible for discharging ING's duties and obligations under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement.

**SECTION 26. WAIVER.**

The waiver by the City, the DCAC or ING of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein nor a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by the City or the DCAC of the performance of any work or services by ING shall not be deemed to be a waiver of any term or condition of this Agreement.

**SECTION 27. GIFTS.**

- A. ING is familiar with City of San José prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. ING agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by ING. In addition to any other remedies the DCAC or the City may have in law or equity, the City may terminate this Agreement for such breach as provided in SECTION 32 of this Agreement.

**SECTION 28. DISQUALIFICATION OF FORMER EMPLOYEES.**

ING is familiar with the provisions relating to the disqualification of former officers and employees of the City of San José in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). ING shall not utilize either directly or indirectly any officer, employee, or agent of ING to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 29. GOVERNING LAW.**

The law of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of the terms and provisions hereof.

**SECTION 30. VENUE AND SERVICE OF PROCESS.**

A. The parties specifically agree that any litigation between them concerning or arising out of this Agreement shall be filed and maintained exclusively in the Superior Court of the County of Santa Clara, State of California, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California. Each party consents to service of process in any manner authorized by California law.

B. ING's California address for service of process is:

CT Corporation Systems  
818 West 7<sup>th</sup> Street  
Los Angeles, CA 90017

**SECTION 31. INSURANCE REQUIREMENTS.**

ING shall have and maintain the insurance coverage set forth in EXHIBIT B, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. ING agrees to provide the Risk Manager with a copy of the certificates of insurance and original endorsements specified in EXHIBIT B before any payment is made to ING under this Agreement.

**SECTION 32. TERMINATION.**

A. The City or ING shall have the right to terminate this Agreement, without cause, by giving not less than one hundred twenty (120) days' written notice of termination to the other.

- 1 B. If ING fails to perform any of its material obligations under this Agreement, in  
2 addition to all other remedies provided by law, the City may terminate this  
3 Agreement immediately upon written notice.
- 4 C. The DCAC is authorized to terminate this Agreement on behalf of the City.
- 5 D. In the event of termination, ING shall deliver to the City or to a third party  
6 designated by the City, in a format approved by the City, copies of all reports,  
7 documents, and other work performed by ING under this Agreement, and  
8 upon receipt thereof, the City shall cause payment to be made to ING for  
9 services performed and reimbursable expenses incurred to the date of  
10 termination.
- 11 E. In the event ING terminates this Agreement, ING shall bear all costs incurred  
12 by the City or the DCAC in connection with the transfer of participant  
13 accounts to another provider.

14 **SECTION 33. USE OF MATERIALS.**

15 The City may use all reports, documents or other materials developed or  
16 discovered by ING or any other person engaged directly or indirectly by ING to perform  
17 the services required hereunder without restriction or limitation. ING may retain copies  
18 of all such reports, documents or other materials which are necessary for ING to  
19 maintain compliance with any applicable law, rule or regulation.

20 **SECTION 34. TRANSITION SERVICES.**

21 In the event ING is not awarded an agreement to continue to provide services  
22 following the expiration or earlier termination of this Agreement, ING shall cooperate  
23 fully with the City and any subsequent investment provider(s) to assure a smooth  
24 transition of services described in this Agreement. Such cooperation shall include, but  
25 not be limited to: transfer of computer data, files and/or tapes; providing adequate staff  
26 and support personnel to complete performance of all services under this Agreement  
27 through the date of completion of the transition; completion of all outstanding investment  
28 transactions; and providing all reports and data required by this Agreement.

29 **SECTION 35. NOTICE ADDRESSES.**

30 Except as otherwise provided in this Agreement, all notices and other  
31 communications between the parties which are contemplated by this Agreement shall  
32 be deemed given when deposited in the United States mail postage prepaid or when  
33 personally delivered or sent by e-mail or facsimile to the parties as specified in this  
34 SECTION 35.

To the City:

Deferred Compensation Advisory Committee  
Human Resources  
200 East Santa Clara Street, 2<sup>nd</sup> Floor Wing  
San José, CA 95113  
Fax: (408) 999-0889

E-mail: Courtney.Phommachack@sanjoseca.gov  
with a copy to Jeanne.Groen@sanjoseca.gov

1

To ING:

Mr. Brian Alemany  
Plan Manager  
One Orange Way  
Windsor, CT 06095  
Fax: (800) 643-8143  
E-mail: Brian.Alemany@us.ing.com  
with a copy to Gary.Bozin@us.ing.com

2

3 **SECTION 36. ENTIRETY.**

4 This Agreement and the exhibits attached hereto constitute the entire agreement  
5 and understanding between the parties regarding the matters set forth in this  
6 Agreement. No prior negotiations, correspondence, conversations or understandings  
7 applicable to the matters in this Agreement shall be of any force or effect unless  
8 specifically included in this written Agreement. This Agreement may be changed or  
9 modified only by a written amendment signed by the City and ING.

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //


24 //

1 **SECTION 37. SEVERABILITY.**

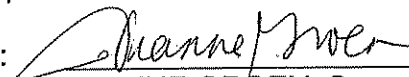
2 In the event any provision of this Agreement is found by a court of competent  
3 jurisdiction to be invalid, void or unenforceable, the remaining provisions of this  
4 Agreement shall nevertheless remain and continue in full force and effect, provided that  
5 the continuation of such remaining provisions does not materially change the duties or  
6 obligations of either party from those duties and obligations originally contemplated by  
7 this Agreement.

8 **WITNESS** the execution of this Agreement on the dates set forth below each  
9 signature:

APPROVED AS TO FORM:

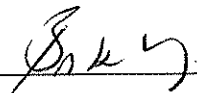
  
SUZANNE HUTCHINS  
Deputy City Attorney

CITY OF SAN JOSE, a municipal  
corporation

By:   
JEANNE GROEN, Secretary  
DEFERRED COMPENSATION  
ADVISORY COMMITTEE

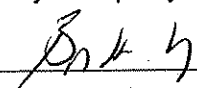
Date: 7/11/08

ING LIFE INSURANCE AND ANNUITY  
COMPANY, a corporation of the State of  
Connecticut

By:   
Name  
Title

Date: 7/8/08

ING FINANCIAL ADVISORS, LLC, a  
limited liability company.

By:   
Vice President  
Date: 7/8/08

## EXHIBIT A COMPENSATION

- A. The administration/recordkeeping services and investment management fees which may be charged by ING Contractor on behalf of the Funds are established by the fund company and incorporated into the NAV they provide to ILIAC. ILIAC uses the AUV to process applicable transactions. The fees shall not exceed the following rates, except as provided in B, below:

Funds Offered as of October 1, 2006					
ASSET CLASS/Fund	Admin. Fee	Investment Mgmt. Fee	Reallocation/ 12(b)-1 Fees	Mort/Risk - Other	Total
<i>STABILITY OF PRINCIPAL</i>					
Stabilizer	N/A	0.50%	0.00%	0.75%	1.25%
ING VP Money Market Portfolio - Class I	0.00%	0.25%	0.00%	0.10%	0.35%
<i>BONDS</i>					
ING INTERMEDIATE BOND FUND - CLASS I	0.00%	0.17%	0.00%	0.21%	0.38%
Templeton Global Bond Fund - Class A	0.00%	0.45%	0.25%	0.35%	1.05%
<i>ASSET ALLOCATION</i>					
ING Solution Income Portfolio - Initial Class	0.00%	0.59%*	0.00%	0.02%	0.61%
ING Solution 2015 Portfolio - Initial Class	0.00%	0.58%*	0.00%	0.02%	0.70%
ING Solution 2025 Portfolio - Initial Class	0.00%	0.77%*	0.00%	0.02%	0.79%
ING Solution 2035 Portfolio - Initial Class	0.00%	0.82%*	0.00%	0.02	0.84%

---

\* A separate Stabilizer Contract has been issued to the 457 Plan and the PTC Plan. For the PTC Plan, the Stabilizer is only investment option available to PTC Plan participants. Participants in the 457 Plan will have available to them for investment the Stabilizer Contract and variable investment funds offered through a group variable annuity contract.

ING Solution 2045 Portfolio - Initial Class	0.00%	0.85%*	0.00%	0.02%	0.87%
Conservative Custom Lifestyle Portfolio	0.00%	0.77%	0.03%	0.06%	0.86%
Moderate Custom Lifestyle Portfolio	0.00%	0.62%	0.05%	0.09%	0.76%
Aggressive Custom Lifestyle Portfolio	0.00%	0.44%	0.06%	0.12%	0.62%
<i>BALANCED</i>					
Pax World Balanced Fund	0.00%	0.50%	0.25%	0.21%	0.96%
<i>LARGE CAP VALUE</i>					
Oppenheimer Main Street Opportunity Fund® - Class Y	0.00%	0.63%	0.00%	0.19%	0.82%
Merrill Lynch Large Cap Value - Class I	0.00%	0.50%	0.00%	0.48%	0.98%
Allianz NFJ Dividend Value Fund - Institutional Shares	0.00%	0.45%	0.00%	0.26%	0.71%
Vanguard® Institutional Index Fund - Institutional Shares	0.00%	0.05%	0.00%	0.00%	0.05
<i>LARGE CAP GROWTH</i>					
The Growth Fund of America® - Class A	0.00%	0.29%	0.25%	0.14%	0.68%
Fidelity® VIP Contrafund® Portfolio - Initial Class	0.00%	0.57%	0.00%	0.09%	0.66%
<i>SMALL / MID / SPECIALTY</i>					
Fidelity® VIP Mid Cap Portfolio - Initial Class	0.00%	0.57%	0.00%	0.12%	0.69%
CRM Mid Cap Value Fund - Investor Shares	0.00%	0.75%	0.00%	0.52%	1.27%
Vanguard® Mid-Cap Index Fund - Institutional Shares	0.00%	0.11%	0.00%	0.02%	0.07%



Pioneer Mid Cap Value VCT Portfolio - Class I	0.00%	0.65%	0.00%	0.06%	0.71%
Wanger U.S. Smaller Companies	0.00%	0.90%	0.00%	0.05%	0.95%
Oppenheimer Main Street Small Cap - Class Y	0.00%	0.63%	0.00%	0.06%	0.69%
Vanguard® Small-Cap Index Fund - Admiral™ Shares	0.00%	0.10%	0.00%	0.03%	0.13%
James Small Cap Fund	0.00%	1.22%	0.25%	0.03%	1.50%
GLOBAL / INTERNATIONAL					
EuroPacific Growth Fund® - Class R-5	0.00%	0.43%	0.00%	0.15%	0.58%
Oppenheimer Developing Markets Fund - Class A	0.00%	0.87%	0.23%	0.33%	1.43%
Templeton Global Smaller Companies Fund, Inc. - Class A	0.00%	0.75%	0.25%	0.35%	1.35%

\* Investment Management Fee for these funds is comprised of an indirect operating fee, a direct investment management fee of the fund, and a waiver.

- B. It is understood that the investment management fees may include subadvisor, mutual or commingled fund, custodial, and operating costs which are not set by ING. The investment management fees change (typically annually) and from fund to fund. ING shall provide to the DCAC, via the Plan Sponsor website, fund fact sheets which disclose the fund expenses on a quarterly basis approximately 45 days following a calendar quarter end. The fund fact sheets will also be made available on the participant website. Should the fees increase above those disclosed in this Exhibit and the DCAC does not support the increase in fees, the DCAC will work with ING to select alternate investment options for the Plan.

In the event the investment management fee for any fund decreases during the term of this Agreement, ING shall immediately notify the DCAC and shall apply the decrease to lower the total fee charged to participant accounts.

END OF EXHIBIT A

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

ING, at ING's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from, or in connection with, the performance of the services hereunder by ING, its agents, representatives, employees, or subcontractors.

A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" Form Number CG 0001), including products and completed operations; and
2. Insurance Services Office Form No. CA 001 covering Automobile Liability, code 1 "any auto" or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8 "hired autos" and code 9 "non-owned autos".
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance.
5. Combination Crime Policy

B. Minimum Limits of Insurance.

ING shall maintain limits no less than:

1. Commercial General Liability: US\$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: US\$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of US\$1,000,000 per accident; coverage shall be endorsed to state

carrier waives its rights of subrogation against the City, its officials, employees, agents and contractors

4. Professional Errors and Omissions: US\$10,000,000 aggregate.
5. Crime/Employee Dishonesty Coverage

A Combination Crime policy with minimum limits not less than \$100,000 for

Form A: Employee Dishonesty  
Form B: Forgery or Alteration  
Form C: Theft, Disappearance, Destruction Inside/Outside Premises  
Form D: Robbery and Safe Burglary Inside/Outside Premises

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, the DCAC, their officers, employees, agents, and contractors; or ING shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability Coverage:
  - a. The City of San José, the Deferred Compensation Advisory Committee, their officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of ING; products and completed operations of ING; and automobiles owned, leased, hired or borrowed by ING. The coverage shall contain no special limitations on the scope of protection afforded to City, the DCAC, their officers, employees, agents and contractors.
  - b. ING's insurance coverage shall be primary insurance as respects City, the DCAC, their officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, the DCAC, their officers, employees agents or contractors shall be excess of ING's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies by ING shall not affect coverage provided City, the DCAC, their officers, employees, agents or contractors.
- d. Coverage shall state that ING's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

2. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premiums.

E. Acceptability of Insurers.

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. Verification of Coverage.

ING shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City's Risk Manager:

Risk Management  
Human Resources Department  
City of San José  
200 East Santa Clara Street, 2<sup>nd</sup> Floor Wing  
San José, CA 95113-1905

G. Subcontractors.

ING shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. Amendment/Modification of Insurance Requirements

These insurance requirements may be amended or waived by the mutual

agreement of ING and the City Risk Manager, provided the City Risk Manager determines that the amendment or modification will not substantially increase the DCAC's or City's liability for activities permitted under this Agreement.

END OF EXHIBIT B

## EXHIBIT C

### PERFORMANCE STANDARDS

ING will meet the following performance standards and will provide financial guarantees as set forth below. In the event a performance standard is not met, ING will remit the financial guarantee no later than the end of the quarter in which the performance standard was not met.

<b>1. Transition Services (period from formal approval to fund transition)</b>	
A. <u><i>Pre-Transition Services Standard:</i></u> Assure attendance at finalist meetings by representatives who will provide direct transition and ongoing services.	
<u><i>Date:</i></u> Finalist Meeting.	
<u><i>Guarantee:</i></u> N/A	
B. <u><i>Standard:</i></u> Return phone calls from employer contact designee within 24 hours and propose method of measuring standard.	
<u><i>Assessment Criteria:</i></u> ING will maintain a log documenting phone call activity to its local representatives. This documentation will be available to DCAC upon request.	
<u><i>Date:</i></u> Transition Period.	
<u><i>Guarantee:</i></u> \$100 per incident for failure to return phone calls from employer contact designee within 24 hours.	
C. <u><i>Standard:</i></u> Respond, in writing with a copy to City, to phone or in-person complaints within 5 business days.	
<u><i>Assessment Criteria:</i></u> Complaints to local representatives will be responded to within the timeframe stated above, with a copy of the response provided to the designated contact at the City.	
<u><i>Date:</i></u> Transition Period.	
<u><i>Guarantee:</i></u> \$100 per incident of failure to respond to complaint within specified time.	
D. <u><i>Standard:</i></u> Comply with Sarbanes-Oxley Act requirements regarding notification of blackout period.	
<u><i>Date:</i></u> Transition period.	
<u><i>Guarantee:</i></u> \$1,000 plus the equivalent of any penalties that are assessed.	

<p>E. <u>Standard</u>: Finalize and publish performance standards and guarantees.</p> <p><u>Date</u>: Provide final copy to City within 30 days of award of contract.</p> <p><u>Guarantee</u>: \$500</p>
<p>F. <u>Standard</u>: Provide agreed upon training to employees and retirees within initial transition period.</p> <p><u>Assessment Criteria</u>: ING will provide the agreed upon training to employees and retirees during the initial transition period. ING anticipates conducting at least 125 group meetings during transition as well as on-site individual meetings as needed.</p> <p><u>Date</u>: Transition period.</p> <p><u>Guarantee</u>: \$1,000</p>
<p><b>2. Transition Exit (period from notification of non-renewal to fund transition)</b></p>
<p>A. <u>Standard</u>: Upon termination, provide: 1) last four quarters of transaction reports, 2) current account balances, 3) past 12 months distribution and deferral information and 4) loan or other outstanding payment amounts.</p> <p><u>Assessment Criteria</u>: ING will provide reports, account balance information and other amounts upon request.</p> <p><u>Date</u>: Within 30 business days after termination, provide report on disk, tape or internet.</p> <p><u>Guarantee</u>: \$1,000 for initial failure to provide and \$500 per day thereafter.</p>
<p>B. <u>Standard</u>: Upon termination, provide information as described in Section 6 on disk, tape or internet.</p> <p><u>Assessment Criteria</u>: ING will provide reports, account balance information and other amounts upon request.</p> <p><u>Date</u>: Within 30 days of request.</p> <p><u>Guarantee</u>: \$1,000 on failure to provide information within timeframe.</p>
<p><b>3. Customer Services</b></p>
<p>A. <u>Standard</u>: Telephone calls to service center(s) will be answered within 90 seconds 90% of the time.</p> <p><u>Assessment Criteria</u>: ING tracks and monitors call activity in its customer contact center. ING will provide a summary of call statistics on a quarterly basis to the City which will reflect overall activity for ING Defined Contribution Plans.</p>

<p><u>Date</u>: Quarterly summary/review due before the end of the month following the quarter.</p> <p><u>Guarantee</u>: \$1,000 per year for failure to meet annual, calendar year average.</p>
<p>B. <u>Standard</u>: Participant statements will be mailed within 15 calendar days after quarter-end.</p> <p><u>Date</u>: Quarterly.</p> <p><u>Guarantee</u>: \$5 per participant per quarter for each statement postmarked later than 15 calendar days after the last day of the quarter.</p>
<p>C. <u>Standard</u>: Finalize customized website within parameters specified in this Agreement in Section 5.E, providing hot link between employer and provider websites and draft participant communication advertising site content and way to access.</p> <p><u>Assessment Criteria</u>: ING currently provides a custom web site with a hotlink to the City's web site. In addition, the City's site contains a hot link to ING. ING will continue to promote web site access in a variety of ways including statement messaging and seminars. ING's transition communication describing the changes to the Plan will also include an announcement highlighting the features of the custom website.</p> <p><u>Date</u>: Due by 3rd month after completion of the transition period.</p> <p><u>Guarantee</u>: \$500 for failure to provide live web site and participant announcement by end of 3rd month after completion of the transition period.</p>
<p>D. <u>Standard</u>: Process investment fund transfers, contribution reconciliation and posting within one business day.</p> <p><u>Assessment Criteria</u>: Transactions are processed within NASD guidelines and generally occur within one business day, assuming requests are in good order. Participant account activity is updated daily and can be viewed through a link from the Sponsor Web site.</p> <p><u>Date</u>: Annual report due 31 days after each Plan year end.</p> <p><u>Guarantee</u>: Maximum \$1,000 for failure to meet agreed-upon standard.</p>
<p>E. <u>Standard</u>: Process hardship distributions, rollover requests, in-service distributions, retiree distribution requests within 5 business days of receipt in good order of acceptable documentation.</p> <p><u>Date</u>: Annual summary of performance by provider.</p> <p><u>Guarantee</u>: \$1,000 annually for failure to meet standard in 90% of actions.</p>



<p>F. <u>Standard</u>: Review plan documents, identify policy issues between the City and ING and summarize, in writing, any recommended changes to documents.</p> <p><u>Date</u>: Within 180 days of completion of the transition period.</p> <p><u>Guarantee</u>: \$500 for failure to meet standard.</p>
<p>G. <u>Standard</u>: Review investment policy and summarize, in writing, any recommended changes.</p> <p><u>Date</u>: Annually within 60 days of the DCAC's acceptance of fund evaluation results.</p> <p><u>Guarantee</u>: \$500 for failure to provide review / summary within specified timeframe.</p>
<p>H. <u>Standard</u>: Provide written proposal of services and draft plan for ongoing participant communication utilizing internet educational resources (e.g. internet or computer based training).</p> <p><u>Date</u>: Within 180 days of completion of the transition period.</p> <p><u>Guarantee</u>: \$500 for failure to provide proposal within timeframe.</p>
<p><b>4. Reports</b></p>
<p>A. <u>Standard</u>: Provide reports as described in Section 12 of this Agreement.</p> <p><u>Date</u>: Varies by report, as described in Section 12 of this Agreement.</p> <p><u>Guarantee</u>: \$500 per failure to provide reports by specified date.</p>
<p>B. <u>Standard</u>: Provide written proposal for recommended reports that will be available to employer online (internet) including proposed access protocols.</p> <p><u>Date</u>: Within 90 days of completion of the transition period.</p> <p><u>Guarantee</u>: \$500 for failure to provide written draft proposal within specified time.</p>
<p>C. <u>Standard</u>: Conduct training of employer-designated personnel regarding access to online reports and use of reporting capability.</p> <p><u>Date</u>: Within 120 days of completion of the transition period.</p> <p><u>Guarantee</u>: \$500 for failure to provide training within specified time.</p>
<p><b>5. Surveys</b></p>
<p>A. <u>Standard</u>: Draft survey.</p> <p><u>Date</u>: Draft due by the end of 4th month after completion of the transition period.</p> <p><u>Guarantee</u>: \$500 if failure to provide draft survey.</p>

<p>B. <u>Standard</u>: Distribute survey to all plan participants.</p> <p><u>Date</u>: Distribution by the end of 6th month after completion of the transition period.</p> <p><u>Guarantee</u>: \$500 if failure to mail 30 days from date of final agreed upon survey content.</p>
<p>C. <u>Standard</u>: Analyze survey results, provide executive summary and recommended actions.</p> <p><u>Date</u>: Complete by end of the 8th month after completion of the transition period.</p> <p><u>Guarantee</u>: \$1,000 if Executive Summary and Recommended Actions is not provided within timeframe.</p>
<p>D. <u>Standard</u>: Repeat survey process steps described above for surveys at 24 and 36 months after completion of the transition period.</p> <p><u>Date</u>: Executive Summary and Recommended Actions due by the end of the 24th and 36th month after completion of the transition period.</p> <p><u>Guarantee</u>: \$1,000 for failure to provide Executive Summary and Recommended Actions by the end of the 24th and 36th after the completion of the transition period.</p>
<p><b>6. Educational Services</b></p>
<p>A. <u>Standard</u>: Provide training to all decision-makers and administrative staff on 404(c) requirements.</p> <p><u>Date</u>: 90 days after completion of the transition period.</p> <p><u>Guarantee</u>: \$500 for failure to provide on-site training within timeframe.</p>
<p>B. <u>Standard</u>: Propose and schedule first year on-site training sessions and content of training for decision-makers and administrative personnel.</p> <p><u>Date</u>: Proposal within 90 days after completion of the transition period and educational programs quarterly thereafter.</p> <p><u>Guarantee</u>: \$500 for failure to provide proposed training and \$500 for failure to provide four training sessions in any year of contract.</p>
<p>C. <u>Standard</u>: Develop and schedule new decision-maker training for employer identified new Committee members or administrative staff.</p> <p><u>Date</u>: Provide half-day on-site training for identified new personnel within 30 days of notification by the City.</p> <p><u>Guarantee</u>: \$500 for failure to provide training within specified timeframe.</p>

<p>D. <u>Standard</u>: After implementation, provide mutually agreeable number of educational seminars annually on site to participants.</p> <p><u>Date</u>: Proposed schedule due within 90 days after completion of the transition period.</p> <p><u>Guarantee</u>: \$1,000 for failure to provide agreed-upon number of onsite group seminars.</p>
<p>E. <u>Standard</u>: After implementation, provide newsletters to plan participants regarding plan benefits / issues.</p> <p><u>Date</u>: Quarterly.</p> <p><u>Guarantee</u>: Annual \$500 penalty for failure to provider quarterly newsletters</p>
<p>F. <u>Standard</u>: Provide representative on site for mutually agreeable number of days per month to meet with plan participants.</p> <p><u>Date</u>: Monthly.</p> <p><u>Guarantee</u>: \$1,000 per year if agreed-upon number of days is not provided for 3 or more months.</p>
<p>G. <u>Standard</u>: Provide draft PowerPoint and / or other communication material for transition specifically written for group meetings for employees / retirees.</p> <p><u>Assessment Criteria</u>: ING will provide drafts of its employee/retiree transition communication materials, including written mailings and PowerPoint presentations to the City for review and approval 30 days after execution of this Agreement.</p> <p><u>Date</u>: 30 Days after execution of this Agreement.</p> <p><u>Guarantee</u>: \$500 for initial failure to provide within 30 days of execution of agreement and \$100 per day thereafter.</p>
<p>H. <u>Standard</u>: Draft communication to plan participants describing investment advice services and access.</p> <p><u>Assessment Criteria</u>: As part of the transition, ING will include a one-page brochure promoting advice services.</p> <p><u>Date</u>: Within 60 days of completion of the transition period.</p> <p><u>Guarantee</u>: \$500 for initial failure to provide within 60 days after completion of the transition period and \$100 per day thereafter.</p>

I. <u>Standard</u> : Recommend, in writing, steps ING and City may take to communicate and coordinate information regarding defined benefits offered through the City and available fund options.  <u>Date</u> : Within 180 days of completion of the transition period.  <u>Guarantee</u> : \$1,000 for failure to provide within specified time.
J. <u>Standard</u> : Provide one half-day session per quarter to employer decision-making and administrative personnel on mutually agreeable topics.  <u>Date</u> : Quarterly.  <u>Guarantee</u> : \$250 per quarter if education session is not provided.
<b>7. Miscellaneous Performance Standards / Guarantees</b>
A. <u>Standard</u> : Provide web site copy listing final agreed-upon Performance Standards / Guarantees.  <u>Date</u> : Upon completion of the transition period and 30 days after any mutually agreed-upon revisions.  <u>Guarantee</u> : \$500 for each failure to provide web-ready document to employer.
B. <u>Standard</u> : Provide annual written summary of all Performance Standards / Guarantees categories and results to the City and as a web document for communication to plan participants.  <u>Date</u> : 30 days after annual anniversary of completion of the transition period.  <u>Guarantee</u> : \$1,000 for failure to provide web-ready document within specified timeframe.

END OF EXHIBIT C